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IN THE

Supreme Court of the United States

October Term, 1994

NATIONAL PRIVATE TRUCK COUNCIL, INC., WESTINGHOUSE ELECTRIC CORPORATION, and ROY E. GRIFFIS,

Petitioners,

v.

OKLAHOMA TAX COMMISSION, *et al.*,

Respondents.

On Writ of Certiorari to the Supreme Court of Oklahoma

PETITIONERS' REPLY BRIEF

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I. CONTRARY TO RESPONDENTS' ASSERTION, THE TAX INJUNCTION ACT, 28 U.S.C. § 1341, DOES NOT PERMIT STATE COURTS TO REFUSE TO APPLY 42 U.S.C. §§ 1983 AND 1988 IN STATE TAX SUITS.

Respondents Oklahoma Tax Commission *et al.* rely entirely on the Tax Injunction Act, 28 U.S.C. § 1341, in support of the Oklahoma Supreme Court's decision in this case. They argue that the Act, as well as cases construing it, such as *Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100 (1981), *Rosewell v. La Salle Nat'l Bank*, 450 U.S. 503 (1981) and *California v. Grace Brethren Church*, 457 U.S. 393 (1982), permit state courts to refuse to apply and enforce federal remedies under 42 U.S.C. §§ 1983 and 1988 in suits challenging state

taxes on federal constitutional grounds when "a plain, speedy and efficient remedy" for the constitutional violation may be had in the courts of the state. Resp. Br. at 8-18.[1]

Respondents, however, conspicuously fail to note that § 1341 by its terms only applies to, and limits the authority of, *federal* courts to entertain suits challenging state taxes when there is plain, speedy and efficient remedy in the state courts. Similarly, *Fair Assessment*, *Rosewell* and *Grace Brethren Church* all concerned actions brought in *federal* courts, and the only issue in those cases concerned the authority of the federal courts to entertain the actions.

Respondents have pointed to nothing in the language or legislative history of the Tax Injunction Act or in the cases construing it that remotely suggests that it was intended to have any effect on the authority or obligations of state courts to enforce federal rights and remedies, including those under §§ 1983 and 1988. Nor have respondents discussed *Howlett v. Rose*, 496 U.S. 356 (1990) or any of the other cases cited by petitioners establishing the fundamental obligation of state courts under our constitutional system to apply and enforce federal laws.[2]

Respondents also assert (Resp. Br. at 17) that this is not a case "where federal remedies have been denied because they

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[1] Two of the amici briefs supporting respondents, States of New Jersey *et al.* and Boyertown Area School District *et al.*, also rely heavily on 42 U.S.C. § 1341. Amici National Conference of State Legislatures, *et al.* (hereinafter "NCSL") does not.

[2] *Parratt v. Taylor*, 451 U.S. 527 (1981) and *Hudson v. Palmer*, 468 U.S. 517 (1984), cited in Respondents' Brief at 14, have no bearing on the issue in this case. In those cases, the Courts held that the prisoner-petitioners' underlying constitutional claims — that state procedures that deprived them of property without due process are in violation of the 14th Amendment — were without merit, and therefore that there was no basis for a § 1983 claim. Nothing in *Parratt* or *Hudson* suggests that state courts need not apply and enforce §§ 1983 and 1988 when the plaintiffs' underlying constitutional claims are found to be meritorious, as they were in this case.

were thought to be contrary to the policy of the State." This assertion, however, is plainly incorrect. The Oklahoma Supreme Court denied the federal remedy of attorney's fees provided by 42 U.S.C. § 1988 because that remedy is not available under Oklahoma law, and its denial of that remedy constitutes a determination that such a remedy is contrary to state policy. That court did not hold that it could not provide such a remedy as a matter of federal law; it merely held that it was not required to do so by federal law and decided that it would not do so as a matter of state policy. Pet. App. 9a-10a.

II. THERE IS NO SUPPORT FOR AMICI NCSL'S CLAIM THAT § 1983 WAS NOT INTENDED TO APPLY TO CHALLENGES TO STATE TAXES

Unlike respondents and the Oklahoma Supreme Court, amici NCSL does not rely on the Tax Injunction Act, but argues instead that Congress never intended § 1983 to provide a remedial scheme for state taxpayers. NCSL Br. at 6-22. The Congress that enacted § 1983, NCSL maintains, "never considered the impact of subjecting [state tax systems] to Section 1983 suits." *Id.* at 11. In further support of its arguments, NCSL asserts that requiring state courts to apply and enforce § 1983 in state tax cases would "significantly disrupt state tax administration." *Id.* at 8.

These arguments are without merit on several counts.

1. It is an elementary principle that the starting point for determining the meaning and application of a statute is the language of the statute itself. *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 685 (1985). Here NCSL appears to acknowledge that the "literal" language of § 1983 applies to cases challenging state taxes (NCSL Br. at 17, 18), and it points to nothing in the legislative history of the statute indicating that Congress intended it *not* to apply to such cases. Yet it contends that the Court should construe § 1983 as not applying to such cases simply because, NCSL asserts, Congress never affirmatively

considered such an application. It asserts: "[T]he Forty-Second Congress never considered the question and thus did not intend for Section 1983 to provide a remedial scheme to challenge state taxation . . . ." *Id.* at 19.[3]

Petitioners are aware of no decision of this Court standing for the extraordinary proposition that a statute should be construed not to apply to a particular matter because Congress assertedly did not consider that specific application. As this Court has noted, it is commonplace for statutes to have particular applications that were not specifically considered. *See, e.g., Unexcelled Chemical Corp. v. United States*, 345 U.S. 59, 64 (1953). *See generally*, Norman J. Singer, *Sutherland Stat. Constr.* § 49.02 (4th ed. 1984) (collecting cases). If Congress wishes to limit the application of broadly worded statutes, the Court has properly required Congress to signify that intent in the language, or at least by very clear legislative history to that effect. *See, e.g., INS v. Cardoza-Fonseca*, 480 U.S. 421, 432, n.12 (1987); *United States v. James*, 478 U.S. 597, 606 (1986); *Consumer Product Safety Com. v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980); *Tennessee Valley Authority v. Hill*, 437 U.S. 153 (1978).

On the other hand, NCSL's approach to statutory construction, if adopted, would cause great mischief. However clear any statute might appear on its face, its actual application to particular matters would be uncertain and would depend on the existence of evidence that Congress specifically contemplated that application.

Furthermore, NCSL's effort to carve one species of action out of § 1983's coverage is sharply at odds with this Court's consistent interpretation of that statute, both in general and specifically in connection with state tax matters. As the Court noted in *Golden State Transit Corp. v. City of Los Angeles*, 493

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[3] *See also id.* at 11, 12.

U.S. 103, 105 (1989), it has "repeatedly held that the coverage of [§ 1983] must be broadly construed." Similarly, in *Monell v. Dept. of Social Services*, 436 U.S. 658, 700-701 (1978), the Court stated that "there can be no doubt that [§ 1983] was intended to provided a remedy, *to be broadly construed*, against *all* forms of official violation of federally protected rights." (emphasis supplied.) In accordance with that principle, the Court has consistently rejected efforts to limit the scope of matters to which § 1983 applies. *See, e.g , Maine v. Thiboutot*, 448 U.S. 1 (1980); *Lynch v. Household Finance Corp.*, 405 U.S. 538 (1972).

Moreover, contrary to NCSL's view, this Court has specifically held or stated on several occasions that § 1983 *does*, in fact, apply to state tax matters. In *McNary*, the Court specifically noted that the Missouri Supreme Court recognized § 1983 claims in its courts. 454 U.S. at 116. Subsequently, in *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89 (1984), the Court observed that "[c]hallenges to the validity of state tax systems under 42 U.S.C. § 1983 . . . must be brought in state court." *Id.* at 122. Finally, in *Dennis v. Higgins*, 498 U.S. 439 (1991), the Court squarely held that a claim based on an unconstitutional state tax may be brought under § 1983.

2. NCSL is also wrong in contending that applying § 1983 to actions challenging state taxes would have significant adverse consequences beyond the recovery of attorney's fees. Specifically, NCSL claims that applying § 1983 in such cases would significantly disrupt state tax administration by overriding state procedures and by permitting injunctive and declaratory relief in cases in which such relief would not be available at state law. NCSL Br. at 8-18.

This claim is not correct. First, it should be noted that the Oklahoma Supreme Court did not indicate that any of the consequences hypothesized by NCSL were of concern to it or were a basis of its opinion. Moreover, none of them are at issue

in this case. Petitioners complied fully with state procedures in this case. As the court below noted in its first opinion, petitioners paid the challenged taxes before filing suit, gave notice of their intent to file suit challenging the taxes and served their complaint on the Chairman of the Tax Commission and the Oklahoma Attorney General, all as required by state law. Pet. App. 40a.

Furthermore, contrary to NCSL, plaintiffs who file a § 1983 claim in state courts are subject to state procedural requirements; the only exception is when such requirements discriminate against federal claims or impair the substantive remedies required by federal law. In general, state courts may use their own procedural rules in adjudicating federally created claims, (Friedenthal, Kane, & Miller, *Civil Procedure*, § 4.8 (2d ed. 1993)), and this same principle applies in the context of state enforcement of § 1983. *See Felder v. Casey*, 487 U.S. 131 (1988) ("No one disputes the general and unassailable proposition . . . that States may establish the rules of procedure governing litigation in their own courts.") Where, however, the state procedural requirement "so interferes with and frustrates the substantive right Congress created, under the Supremacy Clause, it must yield to the federal interest." *Id.* at 151.

Although NCSL asserts that applying § 1983 in state tax cases would prevent states from applying exhaustion-of-remedies requirements, notice-of-claim requirements and tax-specific statutes of limitations, that is not necessarily the case. Nor is it an issue in this case. While NCSL has cited decisions of this Court precluding state courts from applying those requirements and special statutes of limitation in other types of § 1983 actions (NCSL Br. at 9-10), those decisions would not foreclose the Court from deciding that such requirements may be imposed in tax cases if it were persuaded that they did not impair the vindication of the federal remedies mandated by § 1983 and were warranted by the state's special interests in tax matters.

Even if those requirements could not be imposed in tax cases, however, there is no basis for concluding that such a result would "significantly disrupt state tax administration," as NCSL claims. As we noted in our opening brief, many state courts have enforced § 1983 claims in cases challenging state taxes on federal grounds (Pet. Br. at 21, n. 12 (collecting cases)), and none of them has indicated that doing so has significantly disrupted their tax administration.[4]

The specter of punitive damages against state tax officials, which NCSL also raises (NCSL Br. at 9), is plainly a bogeyman. Damages of any kind under § 1983 against state officials, including tax officials, are only available where the official has been acting in bad faith. *See, e.g., Swanson v. Powers*, 937 F.2d 965 (4th Cir. 1991), *cert. denied*, 502 U.S. 1031 (1992). Petitioners in this case did not assert any claim for damages against the individual respondents. In any event, a legitimate state tax system does not depend for its proper administration on the ability of its officials to act in bad faith disregard of the federal rights of taxpayers.

Nor is there any merit in the similar argument of amici States of New Jersey *et al.* that allowing persons to challenge state tax laws under § 1983 will encourage groundless suits against state officials. (New Jersey Br. at 14.) Groundless

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[4] In cases challenging the constitutionality of state tax statutes on their face, such as this one, exhaustion-of-administrative-remedies and notice-of-claim requirements do not usually serve important state interests in any event. Most state courts, for example, apply the generally accepted exception to the exhaustion-of-administrative-remedies requirement for claims challenging the constitutionality of a statute, inasmuch as administrators are not empowered to rule on such claims. *See, e.g., Nordlinger v. Hahn*, ___ U.S. ___, 112 S.Ct. 2326, 2330 (1992). State court rules requiring service of the complaint on the relevant state officials perform largely the same function as notice-of-claim requirements. While bringing a tax claim under § 1983 might result in a longer statute of limitations than state law would otherwise provide in some cases (and a shorter one in others), that result is hardly likely to "disrupt state tax administration" to any significant extent.

§ 1983 tax suits, like other § 1983 suits, will continue to be deterred not only by the prospect of unreimbursed attorney's fees and litigation expenses but also by the fact that, under § 1988, plaintiffs who file a § 1983 suit having no reasonable basis are liable for the attorney's fees and expenses of the defendants. *Hughes v. Rowe*, 449 U.S. 5, 14-15 (1980). Conversely, however, as New Jersey *et al.* effectively acknowledge (Br. at 21-22), potential liability under § 1988 for the attorney's fees of successful plaintiffs will serve as an effective deterrent to overreaching state tax officials. State tax officials are not ignorant of the fact that, without the ability to recover expenses, an out-of-state taxpayer confronted with a constitutionally dubious tax assessment will often opt to pay it rather than incur the far greater expense of a legal change in a distant state.[5] That kind of deterrence, petitioners submit, is entirely appropriate and, indeed, is a major purpose of § 1988.[6]

3. NCSL relies most heavily on a plaintiff's right under § 1983 to injunctive or declaratory relief to support its argument that § 1983 was not intended to provide remedies to persons in state tax cases and would disrupt state tax administration contrary to alleged congressional policy. NCSL Br. at 12-18. Again, however, although the right to equitable relief under § 1983 is an important aspect of the remedies available to

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[5] The brief of amicus Direct Marketing Association ("DMA") describes such instances of overreaching frequently faced by its smaller member companies whose marketing activities in distant states are not taxable under this Court's decision in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), but who are nevertheless often confronted with tax claims that are far cheaper to pay than to contest. DMA Amicus Brief, at 9-11.

[6] As petitioners noted in their opening brief, unless defendant officials are found personally liable for having acted in bad faith, this Court has recognized that the obligation to pay the fees of prevailing plaintiffs under § 1988 is one that falls on the state or agency represented by the official. *Hutto v. Finney*, 437 U.S. 678 (1978); *Kentucky v. Graham*, 473 U.S. 159, 164-67 (1985).

taxpayers under § 1983, there is no reason to believe that enforcement of that right will have any significant or inappropriate adverse impact on legitimate state tax systems or the administration of them.

In the vast majority of cases, when a state court of competent jurisdiction has rendered a final judgment that a challenged state tax is unconstitutional, the entry of a permanent injunction restraining the future collection of the tax, or a declaratory judgment, or both, is a largely unnecessary formality. Whether or not an injunction or formal declaratory judgment is issued, the state officials will almost always cease collecting the tax.[7] In this case, for example, after the Oklahoma Supreme Court issued its decision finding the challenged taxes unconstitutional, respondents ceased collecting them even though the court did not specifically direct or remand for the issuance of injunctive or declaratory relief. *See* Pet. App. 47a.[8] Issuance of equitable

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[7] If the judgment is entered by a trial court and the state tax authorities appeal, they may be entitled under state law to a stay of the judgment, including the injunction, pending appeal, upon whatever showings or conditions that state procedures may require. Although it is not an issue in this case, petitioners would not dispute that state procedures generally permitting stays of judgments pending appeal may be applied to equitable relief issued under § 1983 so long as those procedures are applied evenhandedly to judgments based on federal and state law.

[8] The court's decision did not foreclose the issuance of injunctive relief, but remanded the case to the district court "for a final determination of interest as provided by statute, calculated from the dates set forth in this paragraph, entry of judgment as to that amount, including notification to all class members as determined by the tax rolls of the Commission, and further proceedings not inconsistent with the views expressed herein." Pet App. 47a.

The fact that equitable relief under § 1983 was not specifically issued is immaterial to petitioners' entitlement to fees under § 1988. This Court has held that prevailing plaintiffs are entitled to attorney's fees under § 1988 if § 1983 would have been an appropriate basis for relief. *Maher v. Gagne*, 448 U.S. 122, 132 n. 15 (1980); *Maine v. Thiboutot*, 448 U.S. at 10-11 (1980).

relief, therefore, would not have significantly affected respondents actions in this case. Nor would it have been contrary to Oklahoma law, since Oklahoma statutes permit both injunctive and declaratory relief against Oklahoma taxes found to be invalid.[9]

To say that injunctive and declaratory relief are not necessary as a practical matter in the vast majority of cases is not to say that they are impermissible or inappropriate forms of relief in such cases, however. When, after due deliberation, a state court renders a final judgment finding a state tax to be unconstitutional or invalid under a federal statute, both injunctive relief and declaratory judgment are perfectly appropriate forms of relief under settled principles of equity to avoid the possibility of taxpayers having to file numerous repetitive suits to vindicate fully their federal rights. A judgment that merely awards refunds for taxes previously paid would not fully vindicate those rights if the tax authorities remained legally free to continue collecting the taxes at issue and the taxpayer were required to pay them and then file repetitive suits to recover them.

NCSL acknowledges that equity has long recognized the principle that injunctive relief is appropriate to avoid a multiplicity of suits. NCSL Br. at 13, n. 9. It is wrong, however, in contending, without citation of any supporting authority, that the "the advent of modern procedural rules has rendered this [principle] obsolete." *Id.* at 14, n. 9. Many cases recognize the continuing force and validity of this principle. *See, e.g., Denoie v. Board of Regents of the Univ. of Texas Sys.*, 609 S.W. 2d 601, 603 (Tex.Civ.App. 1980); *Save the Welwood Murrary Memo-*

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[9] Although respondents cite *Oklahoma v. Harris*, 126 P.2d 685 (Okla. 1942), as holding that injunctive relief is not available in tax cases, that decision involved a statutory remedy that apparently predated the statutory remedy herein, 68 O.S. 1981 § 226, which the Oklahoma Supreme Court in this case has described as "authorizing an action for declaratory and injunctive relief, including abatement of the challenged taxes, and a refund." Pet. App. 39a.

rial Library Comm. v. City Council of Palm Springs, 215 Cal. App. 1003, 1017 (1989); *see generally* Dan B. Dobbs, *Law of Remedies*, § 2.5(2) (2d ed. 1993). This principle applies fully in tax cases, and injunctive and declaratory relief is commonly granted in such cases.[10]

The fact that injunctive or declaratory relief might prove to be unnecessary in cases in which the tax authorities would honor the court's ruling on the merits in any event does not mean that an injunction or declaratory judgment is an inappropriate remedy in such cases; that fact simply means that in those cases such remedies will have no adverse effect at all on the tax authorities as a practical matter.[11]

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[10] *See, e.g., Dennis v. State*, Dist. Ct. Lancaster County, Docket 390, Page 26 (September 30, 1987), *aff'd*, 234 Neb. 427, 451, N.W.2d 676 (Neb. 1990), *rev'd on other grounds sub nom. Dennis v. Higgins*, 498 U.S. 439 (1991); *Huie v. Private Truck Council of America*, 466 N.E.2d 435, 436 (Ind. 1984); *Private Truck Council of America v. State Department of Revenue*, Circuit Court of Leon County, Case No. 85-368 (September 1, 1987), *aff'd*, 531 So. 2d 367 (Fla. Dist. Ct. App. 1988); *Div. of Alcoholic Beverages & Tobacco v. McKesson Corp.*, 524 So.2d 1000, 1002 (Fla. 1988), *aff'd* 496 U.S. 18 (1990); *Georgia v. Private Truck Council*, 258 Ga. 531, 371 S.E.2d 378, 379 (Ga. 1988); *Smith v. American Trucking Ass'ns, Inc.*, 781 S.W.2d 3, 6 (Ark. 1989); *National Private Trucking Ass'n v. Indiana Dep't of State Rev.*, 512 N.E.2d 928, 934 (Ind. Tax Ct. 1987); *American Trucking Ass'ns, Inc. v. Conway*, 566 A.2d 1335, 1342 (Vt. 1989); *American Trucking Ass'ns v. Goldstein*, 541 A.2d 955, 963 (Md. 1988). *See generally*, Dobbs, § 2.9(1) ("Injunctions that forbid future misconduct are also frequently coupled with an award of damages for harms already done.")

[11] Very different effects and considerations will apply to requests for *preliminary* injunctions against the collection of taxes from those that apply to permanent injunctions issued with a court's final judgment. Preliminary injunctions can have effects on state tax administration that are both substantial and unwarranted if they are issued on insufficient grounds. For those reasons, courts universally require a strong showing of likelihood of success on the merits and irreparable injury before they will issue a preliminary injunction. Petitioners do not dispute that those stringent requirements may be applied to requests for preliminary injunctions in tax suits brought under

Where those remedies *will* have a significant effect is precisely in those cases where they are essential to protect the taxpayers' federal rights, and therefore where such relief is most appropriate. Those include cases where, despite the court's ruling that a tax or tax practice violates federal rights, the tax authorities would continue to enforce the tax or practice. They also include cases where the imposition of the tax itself impairs a protected activity and where the award of refunds following litigation is insufficient to prevent that impairment.

Poll taxes are a good illustration of the latter situation. In *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966), this Court held that requiring persons to pay a tax as a condition of voting invidiously discriminates against persons on account of their economic status in violation of the Equal Protection Clause. If a state enacts a poll tax, merely allowing a voter to sue for refunds after paying the tax is obviously an

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§ 1983. In this case, for example, the trial court denied petitioner's request for a preliminary injunction *despite* its view that petitioners would probably prevail on the merits (Pet. App. 58a), and petitioners have not disputed that ruling.

In some tax cases, however, even preliminary injunctive relief may be warranted, as this Court has recognized. In *American Trucking Ass'ns. v. Smith*, 496 U.S. 167, 174 (1990), the Court noted that Justice Blackmun had issued a common form of preliminary injunctive relief against an Arkansas truck tax. On the basis of his findings that there was a "significant possibility" that the Arkansas Supreme Court would find the tax unconstitutional and that there was a "substantial risk" that taxpayers would not be able to obtain refunds, Justice Blackmun ordered Arkansas to "escrow the HUE taxes to be collected, until a final decision on the merits in the case is reached." *American Trucking Ass'ns., Inc. v. Gray*, 483 U.S. 1306, 1309 (1987) (Blackmun, J., in chambers). *See also e.g., Miller v. Standard Nut Margarine Co.*, 284 U.S. 498, 509 (1932) (preliminary injunction appropriate in extraordinary circumstances where challenged tax would put taxpayer out of business); *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1,7 (1962) (preliminary injunction appropriate where tax authorities have no chance of success on merits); *see generally*, Michael I. Saltzman, *IRS Practice and Procedure*, § 15.10 (1981).

insufficient remedy for the violation of his constitutional rights. In such a case, injunctive relief is not only appropriate but essential. *See, e.g., United States v. Texas*, 252 F.Supp. 234, 255 (W.D.Tex. 1966) (enjoining enforcement of Texas poll tax). Under NCSL's argument, however, injunctive relief under federal law in such cases would not be available if state procedures provided the taxpayer with a plain, speedy and efficient refund remedy.

Contrary to NCSL, the cases it cites do not support the proposition that Congress did not intend § 1983 to provide state taxpayers with a right to equitable relief against unconstitutional state taxes in actions brought in state court. Like the Tax Injunction Act, *Dows v. Chicago*, 78 U.S. (11 Wall) 108 (1871) and the other cases cited at page 13 of NCSL's brief concerned only the propriety of *federal courts* enjoining state taxes, and those decisions were based entirely on principles of federalism and comity, not upon any view regarding the scope of remedies available under § 1983 in state tax cases.

In sum, there is no basis for NCSL's claim that § 1983 should be construed not to provide equitable remedies to taxpayers challenging state taxes in state courts.

III. PETITIONERS' CLAIM FOR RELIEF WAS RIPE FOR ADJUDICATION WHEN THEY WERE REQUIRED TO PAY THE CHALLENGED TAX IN ORDER TO OPERATE THEIR VEHICLES IN OKLAHOMA.

Alternatively, NCSL makes the remarkable argument that petitioners' claim for relief against Oklahoma's discriminatory truck taxes was not ripe for adjudication "for Section 1983 purposes" unless and until Oklahoma's highest court rejected their constitutional challenge to the tax. NCSL Br. at 22-30. NCSL bases this argument on the claim that taxation is an important state function and that constitutional challenges to state tax schemes often involve complex and difficult issues.

There is no merit to this argument. The argument could be applied with equal force to a wide variety of state actions that have been successfully challenged in § 1983 suits. Voting systems, for example, are also extremely important to states and challenges to them based on the Constitution or federal statutes likewise often involve difficult and complex issues. Nevertheless, in *Baker v. Carr*, 369 U.S. 186 (1962), this Court held that § 1983 provided a valid means to challenge an unconstitutional voting apportionment system. The same could be said of Maine's administration of its welfare system which recipients challenged in a § 1983 action as violating the federal Social Security Act in *Maine v. Thiboutot*. Indeed, virtually any state statute, practice or policy challenged as violating federal constitutional or statutory rights could be said to involve important state functions and to present potentially difficult issues.

There is no basis for distinguishing Commerce Clause challenges to discriminatory state truck taxes from the many other challenges to unconstitutional state actions that have been brought under § 1983. Petitioners' claim for relief under the Constitution and under § 1983 was ripe for adjudication when they were required to pay those taxes as a condition of operating their vehicles in the State of Oklahoma.

Williamson County Regional Planning Com. v. Hamilton Bank of Johnson City, 473 U.S. 172 (1985), on which NCSL primarily relies, provides no support for its argument. *Williamson* involved a claim of a taking of property in violation of the Just Compensation Clause. Taking claims of the kind considered in *Williamson* are very different from the constitutional claim in this case and in most other cases. In *Williamson*, whether or not the plaintiff had any valid constitutional claim depended on how much compensation the states agencies and courts might provide the plaintiff pursuant to the state's procedures. In this case, in contrast, Oklahoma's taxes infringed petitioners' constitutional rights the moment they were imposed,

and petitioners had a valid claim for relief at that moment. The claim in *Williamson* thus bears no resemblance to the claim in this case.[12]

In sum, there is no principled basis for holding that state court's need not enforce § 1983 in cases challenging state taxes on federal grounds.

CONCLUSION

The decision of the Oklahoma Supreme Court should be reversed and the case remanded so that the district court may entertain petitioners' application for attorney's fees and costs under 42 U.S.C. § 1988.

Respectfully submitted,

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[12] The fact that this Court has held that states have a variety of options for rectifying their unconstitutional taxes does not, contrary to NCSL's further argument (NCSL Br. at 26-27), mean that a taxpayer's constitutional claim for relief against the tax is not ripe for adjudication until the state has chosen the means for rectifying it. The options available to the state may affect the form of relief, equitable and otherwise, that the court decides to provide in its final judgment. They do not mean, however, that the taxpayer may not seek any relief until the state has decided what type of relief to provide.